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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,708	03/01/2006	Arnaud Helie	Q92887	8999
23373 7590 06/05/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER MCGRAW, TREVOR EDWIN				
ART UNIT		PAPER NUMBER		
3752				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/566,708

**Applicant(s)**

HELIE ET AL.

**Examiner**

Trevor E. McGraw

**Art Unit**

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 May 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/18/2009 has been entered.

### ***Drawings***

The drawings are objected to because the expulsion channel "5" is pointing to a wall and not the channel. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary

to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "set of spray head assemblies" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "end wall" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In Claim 2 the "at least one projection (30)" is not described in the specification as such and is disclosed as a "flat surface".

***Claim Objections***

Claim 13 is objected to because of the following informalities: the word "channel" should follow the word "expulsion" in line 4. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent

protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 2 recites the broad recitation "at least one projection", and the claim also recites "and preferably three" which is the narrower statement of the range/limitation.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8 and 10-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Marelli et al (US 5,224,471).

In regard to Claim 1 Marelli et al teach a fluid spray head assembly that comprises a fluid spray head (column 2, line 57) has an expulsion channel (11) with a

spray orifice (8) and a spray profile (14, 15, 16 of "10" create the spray profile; see Figure 6) are formed in an end wall (3) of the spray head (column 2, line 57) where non radial spray channels (16) are formed to the swirling chamber (12; column 3, lines 42-53) which opens to a spray chamber (13; 12 opens into 13; "opened is being interpreted as communicating with) that is disposed upstream of the spray orifice (8) where an insert (column 3, lines 28-35) forms an internal nozzle (see where a nozzle effect occurs as fluid flows from "4" past the insert where an area is reduced in size from larger to smaller) and is introduced through the inside of the spray head (see column 2, line 57 and column 3, lines 28-35) being disposed in the expulsion channel (11) so as to form a cover for the spray profile (14, 15, 16 of "10") where the central axis (X) of the insert (9, 10; see also column 3, lines 28-35) is substantially identical to the central axis (Y) of the expulsion channel (11; see Figure 3 where the insert is bounded by three flat walls) and where the spray head comprises centering means for centering the insert (see where centering means are three flat walls of "3" which center "9" of the insert in Figure 3) where the expulsion channel (11) further includes the centering means (see flat walls of "3" in Figure 3) for centering the insert (9, 10; see also column 3, lines 28-35), and in that the centering means are formed in the proximity of the spray profile where the central spray chamber (13) is between the spray orifice (8) of the spray head (column 2, line 57) and the insert (9, 10; see also column 3, lines 28-35) wherein the insert (column 3, lines 28-35) is formed separately from the spray head (column 2, line 57).

In regard to Claims 2-4, Marelli et al also teach where the centering means comprises at least one projection (see flat surface of "3" in Figure 3) and preferably

three, the diameter of the inscribed circle defined by the projections are substantially identical to the diameter of the insert (9, 10; see also column 3, lines 28-35), the expulsion channel (11) includes the three flat surfaces (as shown in Figure 3; see where "11" has flat surfaces) that are distributed symmetrically about the channel (11) where the flat surfaces co-operate with the insert (9, 10; see also column 3, lines 28-35) so as to center it relative to the expulsion channel (11) and the access of the expulsion channel (11) to the spray channels (16) are formed between the projections or flat surfaces (see the access openings of "11" bounded by the flat surfaces of "3" in Figure 3).

In regard to Claims 8 and 10, Marelli et al further teach where the spray head of the spray head assembly can be manufactured from a common mold cavity. It is noted that Claim 8 is a product by process claim. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (See MPEP 2113). Marelli et al is a fluid dispenser device which is characterized in that it includes a spray head assembly of the present invention (as recited in Claims 1; see entire disclosure of Marelli et al.).

In regard to Claim 11, Marelli et al additionally teach a fluid spray head assembly that comprises a spray head (column 2, line 57) having an internal nozzle (see where a nozzle effect occurs as fluid flows from "4" past the insert where an area is reduced in size from larger to smaller) comprising an expulsion channel (11) with a spray orifice (8)

and a spray profile (14, 15, 16 of "10" create the spray profile; see Figure 6) are formed in an end wall (3) of the internal nozzle, the spray profile (14, 15, 16 of "10") comprising spray channels (16) that open out to a central spray chamber (13; 12 opens into 13; "opened" is being interpreted as communicating with) that is disposed upstream of the spray orifice (8) where an insert (column 3, lines 28-35) is disposed in the expulsion channel (11) so as to form a base surface for the spray profile forming the internal nozzle and the spray head (column 2, line 57) is configured with an upstream opening to permit the insert to be introduced inside of the spray head (see column 2, line 57 and column 3, lines 28-35) from the upstream opening in the spray head (column 2, line 57), and wherein, a central axis of the insert (9, 10) is substantially identical to a central axis of the expulsion channel (11; see Figure 3) and at least one radially projection extending from the inside wall of the expulsion channel (11) and abutting the insert (9, 10) so as to substantially align the central axis of the insert (9, 10) with the central axis of the expulsion channel (11) wherein the central spray chamber (13) is between the spray orifice (8) of the spray head (column 2, line 57) and the insert (9, 10) where the insert (9, 10) is formed separately from the spray head (column 2, line 57).

In regard to Claims 12-18, Marelli et al also teach where the spray channels (16) are non-radial, where at least tow additional projection extending from the inside wall of the expulsion channel 911) and abutting the insert (9, 10) so as to substantially align the central axis of the insert with the central axis of the expulsion channel (11) and where the diameter of an inscribed circle defined by the three projections is substantially identical to a diameter of the insert (see Figure 3 where the center axis and diameters

are substantially identical due to abutting arrangement of the projections from "3" with the insert "9" and "10") and the three projections are flat surfaces distributed symmetrically about the central axis of the expulsion channel where access from the expulsion channel (11) to the spray channel (16) is between the projections (flat wall surfaces of "3") and the spray head (column 2, line 57) is coupled to a dispensing member (see column 2, line 67 thru column 3, line 3).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marelli et al (US 5,224,471).

In regard to claims 5-7 and 9, Marelli et al as taught above discloses the claimed invention except for the following: a central axis of the insert being offset from the central axis of the expulsion channel by a distance of less than 0.08 mm, and preferably less than 0.03 mm; a spray chamber having a diameter of 1 mm; a spray orifice having a diameter of 0.3 mm; and the standard deviation of the offset between the central axis of the insert relative to the central axis of the expulsion channel being less than 0.05 mm and preferably less than 0.02 mm.

It would have been an obvious for having ordinary skill in the art at the time the present invention was made to try to offset the central axis of the insert from the central axis of the expulsion channel by a distance of less than 0.08 mm, and preferably less than 0.03 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. and it appears that the invention would perform equally well with the central axis' not being offset from one another where offsetting the central axis' would provide a benefit that would ensure a spray would be directed past the projections through the expulsion channel.

It would have also been an obvious matter of design choice to provide for a spray chamber having a diameter of 1 mm and a spray orifice having a diameter of 0.3 mm as providing for such dimensions of the spray chamber and spray orifice, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. and it appears that the invention would perform equally well if the dimensions of the spray chamber of 1 mm and the spray orifice of 0.3 mm were larger where the sizing of such benefits in atomization of a spray fluid through the restricted opening for directing the fluid.

It would have been a further obvious matter of design choice to provide for a standard deviation of less than 0.05 mm and preferably less than 0.02 mm for the offset between the central axis of the insert relative to the central axis of the expulsion channel, since it has been held that where the general conditions of a claim are

disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art and it appears that the invention would perform equally well without an offset between the insert and expulsion channel where offsetting the central axis' would provide a benefit that would ensure a spray would be directed past the projections through the expulsion channel.

### ***Response to Arguments***

#### **Rejection under 35 USC § 102**

Applicant's arguments with respect to claims 1, 2, 4, 8, 10, 11, 12, 13, 14 and 16 have been considered but are moot in view of the new ground(s) of rejection.

#### **Rejection under 35 USC § 103**

Applicant's arguments with respect to claims 3, 5-7, 9 and 15 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Green (US 3,112,074), Grogan (US 5,738,282), Green (US 4,036,439), Brunet et al (US 4,801,093).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trevor McGraw whose telephone number is (571) 272-7375. The examiner can normally be reached on Monday-Friday (2nd & 4th Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571) 272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T. E. M./  
Examiner, Art Unit 3752

/Len Tran/

Supervisory Patent Examiner, Art Unit 3752